

**DRAFT 1.29 .07**

**DEVELOPMENT AGREEMENT**

**KING'S POINTE MARINA AND RESORT**

**MONROE COUNTY, FLORIDA**

THIS AGREEMENT ("Agreement") is entered into by and between the County of Monroe ("County"), a subdivision of the state of Florida and King's Pointe Marina LLC ("KPM"), a Florida limited liability company pursuant to Sections 9.5-101 and 9.5-102 of the Code of Ordinances for the County of Monroe, the Florida Local Government Development Agreement Act, Sections 163.3220-163.3243, Florida Statutes (2002).

**WITNESSETH:**

WHEREAS, KPM is the owner of real property in Monroe County, Florida, located within unincorporated Monroe County at the intersection of Maloney Avenue and Peninsular Avenue on Stock Island, consisting of three parcels encompassing approximately 9.46 acres of uplands (the "KPM Parcel") as more particularly described in the boundary survey attached hereto as Exhibit A and incorporated by reference; and

WHEREAS, the KPM Parcel is part of a larger parcel of land (the "Marina Parcel") which encompasses the KPM parcel as well as a boat slip condominium of ninety-six (96) slips, a residential condominium of twenty-two (22) units, and a dry boat storage condominium; and

said Marina Parcel being 11.16 acres in size and being more specifically described on the Sketch of Legal Descriptions attached hereto as Exhibit B and incorporated by reference; and

WHEREAS, King's Pointe Marina provides employment to residents of Monroe County, is an integral part of the economy of the Lower Keys, and attracts tourism to Monroe County and Stock Island; and

WHEREAS, redevelopment of King's Pointe Marina will further the County's policy of encouraging redevelopment of marinas in a manner consistent with protecting and enhancing that vital segment of the Florida Keys economy; and

WHEREAS, existing development of the Marina Parcel consists of one hundred fifty-eight (158) dry slips as described below, twenty-two (22) residential condominium units, ninety-six (96) condominium wet slips, and associated commercial development including a restaurant of 4984 sq. ft., two boat storage barns totaling 51957 sq. ft., a retail and storage building of 9775 sq. ft., a office storage building of 9600 sq. ft, and bait/tackle shop and dock master's buildings of 3530 sq. ft; and

WHEREAS, KPM proposes by this Agreement (a) Stormwater collected from Stock Island storm drains located northerly of the marina parcel is currently delivered by county to nearshore waters via pipe located in an easement across the marina parcel. Kings Pointe Marina will design a separate stormwater facility at the terminus of Maloney Avenue on public property, which will have a design capacity sufficient such that the stormwater pipe that crosses KPM property and which serves areas surrounding the KPM property may be removed from the KPM property. . (b) To improve the King's Pointe Marina Parcel by controlling storm-water runoff, upgrading marina pump-out facilities to meet current standards, and bringing development on the property into compliance with the setback, open space, and buffer yard provisions of the

County's LDRs to the maximum extent practicable; and

Whereas, the County and the Florida Department of Community Affairs (DCA) entered into an agreement with Overseas Redevelopment Company, LLC hereinafter referred to as "ORC", dated August 9, 2006, attached hereto as Exhibit C, incorporated herein by reference; and

WHEREAS, the ORC agreement with the County and DCA in paragraph "d." of pages 3 and 4 of 6, allows the transfer of thirty two (32) market rate ROGO units from the ORC property to other properties in the lower keys planning area, such that transfers shall be accomplished "as of right", and further that the 32 units to be transferred from the ORC property are deemed to meet all of the transfer criteria of the County regulations and ordinances, inclusive of the density requirements which would otherwise require TDRs for any receiver site ; and

Whereas, KPM has acquired the rights to thirty two (32) of the transferable market rate ROGO units owned by ORC; and

WHEREAS, redevelopment of the King's Pointe Marina Parcel as authorized by this Agreement is reliant upon transfer from the ORC parcel to the KPM parcel of the thirty-two (32) ROGO units and associated development rights ("TDRs"); and

WHEREAS, transfer of 32 ROGO units to the KPM parcel satisfies the requirement of County *Code* Section 9.5-120.4(b)(d) that redevelopment not increase hurricane evacuation times for residential units in the County; and

WHEREAS, the King's Pointe Marina Parcel is within the Mixed Use (MU) District, a land use designation allowing construction of 32 units of new multi-family housing that will be enabled by the transfer of the ROGO units as provided herein; and

Whereas, the County's adopted change to the Land Development Regulations that

encourage the construction of boat storage barns and buildings was approved by the Florida Department of Community Affairs on January 12, 2007; and

WHEREAS, the upland land area on the Marina Parcel is sufficient to meet the density and intensity requirements in the County *Code* applicable to development of the KPM Parcel as provided under this Agreement; and

WHEREAS, KPM has provided public notice of the parties' intent to consider entering into this Agreement, by posting the properties subject to this Agreement, and

WHEREAS, the County Planning Commission held an advertised public hearing on \_\_\_\_\_, 2007, to consider this Agreement, and recommended approval of the Agreement to the County Commission; and

WHEREAS, the County Commissioners of Monroe County held two advertised public hearings on \_\_\_\_\_ and \_\_\_\_\_ 2007 to consider this Agreement and the recommendation of the Planning Commission, and received public input with respect to the proposal of KPM contained in this Agreement, and has considered the Planning Commission recommendation, the County staff report, and public input; and

WHEREAS, the Board of County Commissioners of Monroe County has determined that this Agreement is in the public interest, is consistent with its policy to encourage the redevelopment of marinas in County consistent with maintaining water access, and will further the health, safety and welfare of the residents of County;

NOW, THEREFORE, in consideration of the mutual promises and undertakings contained herein, the receipt and sufficiency of which are hereby acknowledged, the parties agree as follows:

**I. RECITALS.** The foregoing Recitals are a part of this Agreement on which the

parties have relied and are incorporated into this Agreement by reference.

## **II. PURPOSES OF AGREEMENT.**

The parties agree as follows:

A. To authorize redevelopment of the Marina Parcel consistent with Future Land Use Element Policy 101.4.23 (recognition of legally established units) and

B. To allow development of thirty-two (32) additional units of multi-family market-rate housing on the KPM parcel by the transfer of thirty-two (32) ROGO units from the ORC property; and

C. To reduce the environmental impacts of development on the Marina Parcel by connecting all existing and proposed development to the Stock Island wastewater facility, appropriately addressing stormwater runoff, upgrading marina pump-out facilities, and bringing the development on the property into compliance with setback, open space, and buffer yard requirements of the LDRs; and

D. KPM and the County acknowledge that the transfer of the thirty-two (32) ROGO units from the ORC property to the KPM parcel shall be accomplished and finalized by adoption of this Agreement.

## **III. DEFINITIONS.**

For the purposes of this Agreement, the following terms shall have the following definitions:

*Agreement* shall refer to this Development Agreement, as the same may be subsequently amended, modified or supplemented pursuant to its terms and provisions and pursuant to the

provisions of Sections 163.3220 *et. Seq., Florida Statutes.*

*Annual Report* shall refer to the report filed by KPM with County and (as and when applicable) DCA.

*County Code* or *LDRs* shall refer to the land development regulations published in the Code of Ordinances of Monroe County, Florida.

*Comprehensive Plan* shall refer to County' s 2010 Comprehensive Plan.

*DCA* shall refer to the State of Florida Department of Community Affairs, or any successor agency.

*Development* shall refer to development of the King's Pointe parcel for uses permitted by, and subject to, the conditions, obligations, and restrictions contained in this Agreement.

*Effective Date* shall refer to the date this Agreement becomes effective, as set forth herein.

*King's Pointe* shall refer to one or more of the parcels of real property described, respectively, in Exhibits A and B hereto.

*2010 wastewater standards* means the best available treatment standards established by *Laws of Florida* 99-395 for onsite sewage treatment and disposal systems, codified in Section 381.0065, *Florida Statutes.*

#### **IV. STATUTORY AND CODE REQUIREMENTS.**

The parties recognize the binding effect of Sections 163.3220 *Florida Statutes, et seq.,* as to the content and enforceability of this Agreement, and in accordance therewith hereby set forth and agrees to the following:

##### **A. Legal Description and Ownership.**

KPM is the sole owner of the KPM parcel that is subject to this Agreement as depicted on

the Boundary Survey prepared by Fred Hildebrandt LS drawing 02-207 attached hereto as Exhibit A.

**B. Duration of Agreement.**

This Agreement shall remain in effect for five (5) years from its effective date as defined herein.

**C. Existing Development.**

Existing development on the Marina Parcel is identified on the surveys attached hereto as Exhibit A and Exhibit B.

**D. Permitted Uses, Phasing and Affordable Housing.**

1. The development permitted on the KPM parcel shall consist of those uses set forth herein, as identified on the Conceptual Site Plan attached hereto as Exhibit C and incorporated by reference.

3. All residential units developed on the King's Pointe Marina property under this Development Agreement may be used as vacation rental units as defined in Section 9.5-534 of the Monroe County LDRs, but any unit owner may elect to maintain the unit as a permanent residence.

4. For the duration of this Agreement, the parties agree that any and all of the approved development shall adhere to, conform to, and be controlled by this Agreement, the exhibits attached hereto and incorporated by reference, and, to the extent consistent with the provisions hereof, the County Land Development Regulations in effect on the effective date of this Agreement. In the event that all or a portion of the existing or authorized development subject to this Agreement should be destroyed by storm, fire, or other common disaster, KPM, its grantees, successors, or assigns shall have the absolute right to rebuild or repair the affected

structure(s) and reinitiate the prior approved use so long as such development is in compliance with this Agreement.

5. The following exhibits are attached hereto and incorporated by reference:

- |           |   |
|-----------|---|
| Exhibit A | Boundary survey prepared by Fred Hildebrandt L drawing 02 -207                            |
| Exhibit B | Sketch of Legal Descriptions to Verify Acreage prepared by R.E. Reece, P.A. dated 8.11.06 |
| Exhibit C | Overseas Redevelopment Company, LLC development agreement                                 |
| Exhibit D | Conceptual Site Plan for King's Pointe Marina   |

KPM shall not be bound by this Agreement to the building layout depicted (for illustrative purposes only) on the attached Conceptual Site Plan, Exhibit C. Final Site Plans shall be configured as otherwise set forth herein, and as permitted by County LDRs not inconsistent herewith provided that the densities and intensities set forth in this Agreement are met.

6. Applicable Density, Intensity and Building Heights. Density and intensity shall be as provided in this Agreement. Maximum building height shall be that established by the Comprehensive Plan and Land Development Regulations.

7. The thirty-two (32) market-rate residential units to be established on the KPM parcel will be developed utilizing thirty-two (32) ROGO units transferred from the ORC property. The existence of those 32 ROGO units and KPM's right to transfer them to the KPM parcel pursuant to the terms of this Agreement are hereby acknowledged by the parties.

8. Any existing commercial floor area on the KPM site which is not used for proposed development, lawfully established and in existence before January 12, 2007, may be retained by KPM for possible transfer from the KPM site to other eligible site anywhere in the County subject to the requirements of the County's Non Residential Rate of Growth Ordinance.

**E. Public Facilities;**



1. The Florida Keys Aqueduct Authority provides domestic potable water.
2. Electric service is provided by the Keys Energy Services.
3. Solid waste service is provided by County Franchised Garbage Collection Service.
4. Wastewater and sewage collection and disposal shall be (a) as to the KPM parcel, by connection to the Stock Island wastewater collection and treatment system at the time of building permit application.
5. Educational Facilities. The resort and commercial development of the KPM parcel, as contemplated by this Agreement, does not impact upon educational facilities. The Marina Parcel is currently served by the following schools, operated by the Monroe County School Board: Key West County High School, Glynn Archer Middle School and Gerald Adams Elementary School.
6. Recreational Facilities. The Marina Parcel provides facilities for active recreation, including swimming and boating opportunities, for owners and guests of King's Pointe Marina. Therefore, redevelopment of the property will have no adverse impact on public recreation facilities.
7. Any increased impacts on public facilities or public services attributable to each unit of the development, and the cost of capital improvements to meet the associated demand on such facilities or services, shall be assured by payment to County, concurrent with the issuance of the building permits for each unit, of all County impact fees required by Ordinance then in effect, as well as by payment by KPM of applicable utility system development fees.

**F. Local Development Permits.**

1. The following is a list of all development permits approved or needed to be

approved for the development of the property as specified and requested in this Agreement:

- a. This Development Agreement;
- b. Major Conditional Use approval or amendment of the existing Major Conditional Use approval for King's Pointe;
- c. The final site plan, landscape plan, drainage plan, building elevations and floor plans for both Kings' Pointe;
- d. Building and related construction permits for all main and accessory structures, land clearing, and landscaping. At any time any building permit is applied for, KPM shall demonstrate compliance with all applicable Federal, State and municipal disabled-access regulations in effect at the time of application at both sites;
- e. Federal, State, regional, and local permits for stormwater runoff and dredge and fill activities and environmental (or endangered species) takings, when necessary and if required.

2. Nothing in this Agreement shall preclude the parties from applying additional conditions, by mutual agreement, during final site plan review or permitting.

**G. Finding of Consistency.**

By entering into this Agreement, the County finds that the development permitted or proposed herein is consistent with and furthers the Principles for Guiding Development for the Florida Keys Area of Critical State Concern (Section 380.0552(7), *Florida Statutes*) and the Monroe County 2010 Comprehensive Plan.

**H. Reservations or Dedications of Land for Public Purposes.**

The parties anticipate that KPM may reserve or dedicate land for public purposes in connection with the development authorized by this Agreement, but are currently unaware of the

specifics of such reservation(s) or dedication(s). Reservations and dedications for public purposes in connection with this Agreement will be as required by the County's Comprehensive Plan and County Code. Such reservations or dedications may include, by way of example, easements necessary for the provision of stormwater, utility, and wastewater services to the Property.

**I. Mutual Cooperation.** County and KPM agree to cooperate fully with and assist each other in the performance of the provisions of this Agreement.

**J. Development to Comply with Permits and County Comprehensive Plan and Code Provisions.** The development described in and authorized by this Agreement shall be developed in accordance with all required permits, and in accordance with all applicable provisions of the County's Comprehensive Plan and County Code in effect on the date of execution of this Agreement. No Certificate of Occupancy for an individual building shall be issued until all plans for that building are approved by County and KPM has complied with all conditions in permits issued by County and other regulatory entities for that building.

**K. Compliance With Permits, Terms, Conditions, and Restrictions Not Identified Herein.** The failure of this Agreement to address a particular permit, condition, term, or restriction shall not relieve KPM of the necessity of complying with the law governing said permitting requirements, conditions, terms, or restrictions.

**L. Laws Governing.**

a. For the duration of this Agreement, all approved development of King's Pointe Marina shall comply with and be controlled by this Agreement and applicable provisions of the County's Comprehensive Plan and County Code in effect on the date of execution of this Agreement, inclusive of text changes and rezoning approved by the County Commission on the

date of County's approval of this Agreement, if any. The parties do not anticipate that County will apply subsequently adopted laws and policies to the Marina Parcel, except as expressly provided in this Agreement.

b. County may apply subsequently adopted laws and policies to King's Pointe Marina only if County holds a public hearing and determines that: (a) the new laws and policies are not in conflict with the laws and policies governing the Agreement and do not prevent development of the land uses, intensities, or densities set forth in this Agreement; (b) the new laws and policies are essential to the public health, safety, or welfare, and County expressly states that they shall apply to the development that is subject to this Agreement; (c) County demonstrates that substantial changes have occurred in pertinent conditions existing at the time of approval of this Agreement; or (d) the Agreement is based on substantially inaccurate information supplied by KPM. However, nothing in this Agreement shall prohibit the parties from mutually agreeing to apply subsequently adopted laws to King's Pointe.

c. If State or Federal laws enacted after the effective date of this Agreement preclude any party's compliance with the terms of this Agreement, it shall be modified as is necessary to comply with the relevant state or federal laws. However, this Agreement shall not be construed to waive or abrogate any rights that may vest pursuant to common law.

**M. Amendment, Renewal, and Termination.** This Agreement may be amended, renewed, or terminated as follows:

a. This Agreement may be amended by mutual consent of the parties to this Agreement or by their successors in interest. Amendment under this provision shall be accomplished by an instrument in writing signed by the parties or their successors.

b. This Agreement may be renewed by the mutual consent of the parties, subject to

notice and public hearing requirements of applicable law.

c. This Agreement may be terminated by KPM or its successor(s) in interest following a material breach of this Agreement by County, upon written notice to County as provided in this Agreement.

d. This Agreement may be terminated by County upon a finding of failure by KPM to comply with the terms of this Agreement.

e. This Agreement may be terminated by mutual consent of the parties without the need for any further public hearing.

**N. Breach of Agreement and Cure Provisions.**

a. If County concludes that there has been a material breach in this Agreement by KPM, prior to terminating this Agreement, County shall serve written notice on KPM identifying the term or condition County contends has been materially breached and providing KPM with ninety (90) days from the date of receipt of the notice to cure the breach or negotiate an amendment to this Agreement. Each of the following events, unless caused by fire, storm, flood, other Act of God, or events beyond the control of KPM, shall be considered a material breach of this Agreement: (1) failure to comply with material substantive provisions of this Agreement; or (2) failure to comply with material terms and conditions of permits issued by County, or other regulatory entity for the development authorized by this Agreement.

b. If KPM concludes that there has been a material breach in the terms and conditions of this Agreement by County, KPM shall serve written notice on County identifying the term or condition that KPM contends has been materially breached and providing County with thirty (30) days from the date of receipt of the notice to cure the breach. The following events, unless caused by fire, storm, flood, other Act of God, or events beyond the control of

County shall be considered a material breach of this Agreement: failure to comply with material provisions of this Agreement; or failure to timely process any application for site plan approval or other development approval required to be issued by County for the development/redevelopment authorized by this Agreement.

c. If a material breach in this Agreement occurs and is not cured within the time periods provided above, the party that provided notice of the breach may elect to terminate this Agreement or may seek to enforce this Agreement as provided herein.

d. If any party waives a material breach in this Agreement, such a waiver shall not be deemed a waiver of any subsequent breach.

**O. Notices.** All notices, demands, requests, or replies provided for or permitted by this Agreement, including notification of a change of address, shall be in writing to the addressees identified below, and may be delivered by any one of the following methods: (a) by personal delivery; (b) by deposit with the United States Postal Service as certified or registered mail, return receipt requested, postage prepaid; or (c) by deposit with an overnight express delivery service with a signed receipt required. Notice shall be effective upon receipt. The addresses and telephone numbers of the parties are as follows:

To KPM:

Mr. Everett Atwell  
KPM LLC  
1115 Marbella Plaza Drive  
Tampa, Florida 33619  
Telephone: (813) 663-0401

With a copy by regular U.S. Mail to:

Mr. Timothy Koenig, Esquire  
Feldman, Koenig and Highsmith, P.A.  
3158 Northside Drive

Key West, Florida 33040  
Telephone: (305) 296-8851

To County:

Thomas J. Willi, County Administrator  
County of Monroe  
1100 Simonton Street  
Key West, Florida 33040  
Telephone: (305) 292-4441

With a copy by regular U.S. Mail to:

Suzanne Hutton, Esquire  
County Attorney  
502 Whitehead Street, 3<sup>rd</sup> floor  
Key West, Florida 33040  
Telephone: (305) 292-3470

**P. Annual Report.** On the anniversary date of the Effective Date of this Agreement, KPM shall provide County with a report identifying (a) the amount of development authorized by this Agreement that has been completed, (b) the amount of development authorized by this Agreement that remains to be completed, and (c) any changes to the plan of development that have occurred during the one (1) year period from the Effective Date of this Agreement or from the date of the last annual report.

**Q. Enforcement.** Any party hereto may file an action for injunctive relief in the Circuit Court of Monroe County, Florida, to enforce the terms of this Agreement.

**R. Binding Effect.** This Agreement shall be binding upon the parties hereto, their successors in interest, heirs, assigns, and personal representatives.

**S. Assignment.** This Agreement shall inure to the benefit of, and bind, KPM's

successors and assigns, but may not otherwise be assigned without the written consent of the parties.

**T. Severability.** In the event any provision, paragraph or section of this Agreement is determined to be invalid or unenforceable by a court of competent jurisdiction, such determination shall not affect the enforceability or the validity of the remaining provisions of this Agreement.

**U. Applicable Law.** This Agreement was drafted and delivered in the State of Florida and shall be construed and enforced in accordance with the laws of the State of Florida.

**V. Litigation; Attorney's Fees; Venue; Waiver of Right to Jury Trial.** As between County and KPM, in the event of any litigation arising out of this Agreement, the prevailing party shall be entitled to recover all reasonable costs incurred with respect to such litigation, including reasonable attorneys' fees. This includes, but is not limited to, reimbursement for such reasonable attorneys' fees and costs incurred with respect to any appellate, bankruptcy, post-judgment, or trial proceedings related to this Agreement. Venue for any legal proceeding arising out of this Agreement shall be in Monroe County, Florida. The parties to this Agreement waive the right to a jury trial in any litigation arising out of or initiated under this Agreement.

**W. Use of Singular and Plural.** Where the context requires, the singular includes the plural, and the plural includes the singular.

**X. Duplicate Originals; Counterparts.** This Agreement may be executed in any number of originals and in counterparts, all of which evidence one Agreement. Only one original is required to be produced for any purpose.

**Y. Headings.** The headings contained in this Agreement are for identification



purposes only and shall not be construed to amend, modify, or alter the terms of the Agreement.

**Z. Entirety of Agreement.** This Agreement incorporates or supersedes all prior negotiations, correspondence, conversations, Agreements, or understandings regarding the matters contained herein. The parties agree that there are no commitments, agreements, or understandings concerning the subjects covered by this Agreement that are not contained in or incorporated into this document and, accordingly, no deviation from the terms hereof shall be predicated upon any prior representations or agreements, whether written or oral. This Agreement contains the entire and exclusive understanding and agreement among the parties and may not be modified in any manner except by an instrument in writing signed by the parties.

**AA. Recording; Effective Date.** KPM shall record this Agreement in the public records of Monroe County, Florida, within fourteen (14) days after the effective date of this Agreement. A copy of the recorded Agreement showing the date, page and book where recorded shall be submitted to the state land planning agency by hand delivery, registered or certified United States mail, or by a delivery service that provides a signed receipt showing the date of delivery, within fourteen (14) days after the Agreement is recorded. KPM shall also provide a copy of the recorded Agreement to County within the same time period.

**BB. Effective date of Agreement.** The effective date of this Agreement is the date the last party signs and acknowledges this Agreement.

IN WITNESS WHEREOF, the parties hereto have set their hands and seals on the day and year below written. Signed, sealed, and delivered in the presence of:

KING'S POINT MARINA LLC, a Florida Limited  
Liability Corporation

\_\_\_\_\_, 2007

By: \_\_\_\_\_  
EVERETT ATWELL

Signed, sealed, and delivered in the presence of:

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Name of Witness (printed or typed)

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Name of Witness (printed or typed)

STATE OF FLORIDA)

County OF MONROE)

The foregoing Agreement was acknowledged before me on this \_\_\_\_ day of \_\_\_\_\_ 2006, by EVERETT ATWELL, the \_\_\_\_\_ of KING'S POINT MARINA LLC and the respective witnesses, \_\_\_\_\_ and \_\_\_\_\_, who are either personally known to me or produced Florida drivers licenses as identification.

\_\_\_\_\_(SEAL)  
Notary Public

Name (typed, printed or stamped)

My commission expires: \_\_\_\_\_

On the \_\_\_\_\_ day of \_\_\_\_\_ 2007, the County Commission of the County of Monroe approved this Agreement by Resolution No. \_\_\_\_\_

COUNTY OF MONROE

By: \_\_\_\_\_  
MAYOR

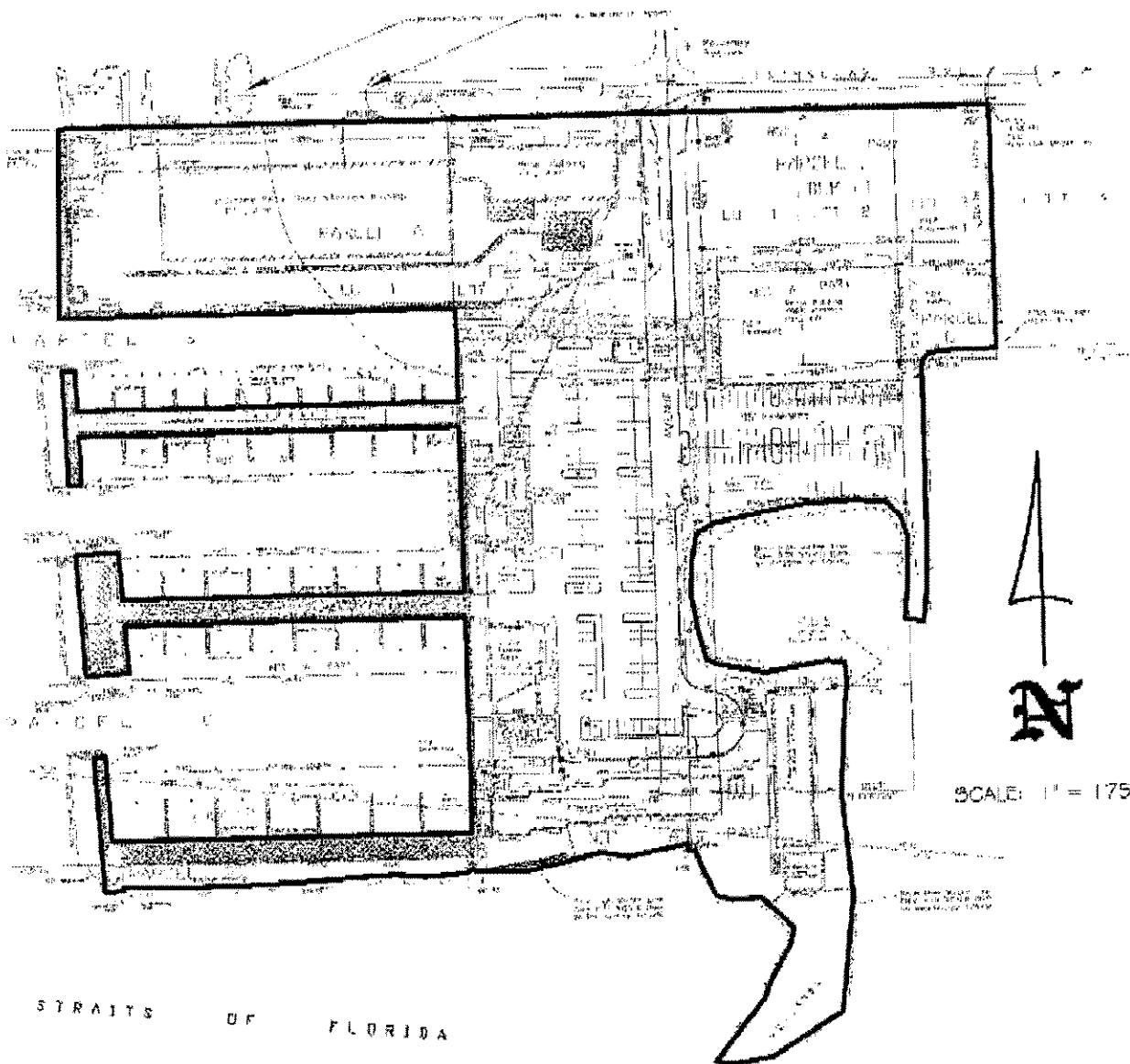
ATTEST:

\_\_\_\_\_  
Danny Kolhage, County Clerk

APPROVED AS TO FORM AND LEGAL  
SUFFICIENCY:

\_\_\_\_\_  
Suzanne Hutton  
County Attorney

# SKETCH OF LEGAL DESCRIPTIONS TO VERIFY ACREAGE



TOTAL PROPERTY = 486,001 SQ. FT.  
= 11.16 ACRES

KINGS POINTE MARINA 5950 PENINSULAR AVE. KEY WEST, FL 33040

PREPARED FOR: CORTEX COMPANIES

DATED: 8-11-06

LEGAL DESCRIPTIONS PROVIDED BY THE CLIENT

SIGNED

*R. E. Reece*

NOT VALID WITHOUT THE  
SIGNATURE AND THE GROUND  
STAMP OF A REGISTERED  
SURVEYOR AND MAPPER

ROBERT E. REECE, TSM 4543, PROFESSIONAL SURVEYOR AND MAPPER, FL 33040

**R.E. REECE, P.A.**  
PROFESSIONAL SURVEYOR AND MAPPER

50954 QUAIL ROOST TRAIL, BIG TINE KEY, FL 33043  
OFFICE (305) 872-1348  
FAX (305) 872-5621

**AGREEMENT**  
**Pursuant to Section 380.032(3), Florida Statutes**

**COPY**

THIS SECTION 380.032 AGREEMENT is entered into between the **Department of Community Affairs**, an agency of the State of Florida (hereinafter referred to as "DCA" or Department"), **Overseas Redevelopment Company, LLC** (hereinafter referred to as "ORC"), and **Monroe County**, a political subdivision of the State of Florida (hereinafter referred to as "County"), pursuant to the terms and conditions herein and § 380.032(3), *Florida Statutes*.

WHEREAS, Monroe County, Florida includes within its boundaries all of the Florida Keys and is known as an Area of Critical State Concern, as designated under Sections 380.05, *Florida Statutes*, and Chapter 28-36, *F.A.C.*; and

WHEREAS, the DCA is the state land planning agency having the power and duty to exercise general supervision of the administration and enforcement of Chapter 380, *Florida Statutes*, the Environmental Land and Water Management Act (the "Act"), which includes provisions relating to areas of critical state concern; and

WHEREAS, DCA is authorized by § 380.032(3), *Florida Statutes*, to enter into an agreement with any landowner, developer or other governmental agency as may be necessary to effectuate the provisions and purposes of the Act, or any related rule; and

WHEREAS, in March, 2005 ORC entered into a contract to purchase a parcel of real property located on Stock Island, Florida comprising approximately 3.56 acres, as is more fully described in Appendix "A", also known Overseas Trailer Park (the "Property"), pursuant to which contract ORC, as contract vendee, is entitled to seek and obtain government approvals for the development of the Property; and

WHEREAS, after acquiring the Property, ORC presented an application for an amendment to a conditional use to the County to convert sixty-three (63) mobile home sites to forty-nine (49) market rate housing units on the property; and

WHEREAS, ORC negotiated with the County the terms of an agreement to resolve vested rights and other development issues that were the subject of protracted discussions between the County and ORC; and

WHEREAS, the goal of the parties was to seek a means to preserve affordable housing by identifying a plan that would create workforce housing units and recognize certain remaining market rate units on the Property; and

WHEREAS, it is in the public interest and consistent with current County ordinances and planning initiatives that Overseas Trailer Park be developed as workforce housing, rather than market rate units; and

WHEREAS, it is in the public interest and consistent with County planning initiatives that private lands capable of supporting workforce housing developments be purchased and brought into public ownership when possible; and

WHEREAS, the County recognizes that to achieve this public purpose it is necessary to provide Rate of Growth Ordinance rights (ROGO units) as part of the purchase price incentive to private landowners in the position of ORC.

NOW, THEREFORE, in consideration of the mutual covenants and the terms and conditions set forth hereafter, the County, ORC and DCA agree as follows:

1. **Incorporation of Recitals.** All of the foregoing recitals are incorporated into this Agreement.

2. **Development Agreements.**

2.1. The parties agree that the Property that is subject of this agreement, based on the most accurate historical information available, has sixty-three (63) ROGO units allocated to the Property.

2.2. The parties agree that ORC currently has the lawful right to construct forty-nine (49) market rate units on the Property.

2.3. The parties agree that there presently are an additional fourteen (14) market rate ROGO units on the Property that may be transferred off site by ORC.

2.4. The County will purchase the Property from ORC pursuant to the following terms and conditions:

- a. The County will pay to ORC the sum of Two Million Five Hundred Thousand Dollars (\$2,500,000.00) in cash in exchange for the transfer of ORC's fee simple ownership in the Property.
- b. The County will lease the Property back to ORC in a lease format approved by the County and ORC for a term of ninety-nine

(99) years for a rental rate of Ten Dollars (\$10.00) per year. As tenant, ORC shall assume all expenses and obligations of ownership of the Property. As set forth below, ORC will redevelop the Property into a workforce housing community, which ORC will operate and manage consistent with the County's workforce housing regulations, as amended from time to time, including oversight by the County Housing Authority.

c. The County will allocate eighteen (18) of its affordable ROGO units in its inventory to ORC for the redevelopment project, and ORC will provide thirty-one (31) of its ROGO units to the project. Said eighteen (18) County units and thirty-one (31) ORC units shall be used by ORC to redevelop the Property into a forty-nine (49) unit workforce housing community. The County may substitute thirty-one (31) of its affordable housing ROGO allocations for the 31 ORC units and in which event ORC will assign the 31 ORC market rate ROGO allocations to the County for its use. Thereafter, ORC shall own all forty-nine (49) units and shall be able to sell the same to third parties in accordance with the County's workforce housing guidelines. The parties agree that ORC shall have the greatest possible latitude under the workforce housing guidelines in its selling of units in the community, and shall be able to sell such units at the maximum prices permissible under the workforce housing guidelines, including but not limited to those prices chargeable to people in the "moderate" income classification.

d. The remaining thirty-two (32) market rate ROGO units retained by ORC may be sold by ORC upon such terms and conditions as it in its sole and absolute discretion deems appropriate, and such units may be transferred off the Property singly, in groups or all together to a receiver site or sites. ORC shall be entitled to transfer such units at such time as it has been issued a building permit for

the redevelopment of the Property as set forth above. Each of the thirty-two (32) ROGO units to be transferred off the Property is deemed to meet the transfer criteria established by County regulations and ordinances and shall be transferable as of right to a receiver site. The units transferred off may not be transferred beyond the Lower Keys District boundaries unless and until the nutrient reduction system is officially dispensed with as a result of official state action or judicial decree. The units being transferred off-site may not be transferred in a Tier 1 zoning district; or a special protection area if the construction of the units would require clearing of natural habitat; or if evaluated under ROGO the site would receive negative points under habitat protection, threatened or endangered species, or critical habitat.

e. The transfer of affordable units from one owner to another will be monitored by the County in a manner to be determined by the County from time to time.

f. Until such time as Monroe County shall adopt "workforce housing" regulations ORC shall comply in all respects with the definition of "affordable housing" in the Monroe County Code and shall additionally require each unit purchaser or adult occupant to be a member of the Monroe County workforce, i.e. to be gainfully employed, full time, in Monroe County at the time of purchase or occupancy and to remain so employed for not less than five years thereafter.

3. **Construction of the Agreement.** The parties hereto have entered into this Section 380.032 agreement in recognition of the unique circumstances applicable to the Property, and in consideration of the public benefits to be obtained by preserving workforce housing stock. Accordingly, this Section 380.032 Agreement should not be construed as establishing precedent or procedure for any other development application.



4. **General Provisions.** The County will not take any official action through its agents or employees which would contravene, interfere with or alter any provision in this agreement.

5. **Authorized Signatures.** The Board of County Commissioners of Monroe County, or its authorized designee, shall execute this Section 380.032 Agreement on behalf of the County following approval of this Agreement by the Board of County Commissioners. The Director of the Division of Community Planning, or his/her authorized designee, shall execute this Agreement on behalf of DCA. ORC shall execute this Agreement by its duly-authorized officer.

6. **Entirety of Agreement.** The County, DCA and ORC further agree that this Section 380.032 Agreement contains the entire and exclusive understanding and agreement among the parties and may not be modified in any manner except by an instrument in writing and duly signed by the County, DCA and ORC.

7. **Duplicated Originals.** This Section 380.032 Agreement may be executed in any number of originals, all of which evidence one agreement, and only one of which need be produced for any purpose.

8. **Enforcement.** In the event of a breach of this Section 380.032 Agreement, or failure to comply with any condition of it, the County, DCA and ORC may enforce this Agreement pursuant to §§ 380.05 and 380.11, *Florida Statutes*, or as otherwise provided by law.

9. **Scope of Authority.** This Section 380.032 Agreement affects the rights and obligations of the County, DCA and ORC as provided under the terms herein and Chapter 380, *Florida Statutes*. This Section 380.032 Agreement is not intended to influence or determine the authority or decisions of any other state or local government or agency in issuance of any other permits or approvals that might be required by state law or local ordinance for any development authorized by this Agreement except as otherwise provided herein.

10. **Effective Date.** This Agreement shall take effect upon signature of the last of the parties to sign this Agreement.


IN WITNESS WHEREOF, the parties by and through their respective undersigned duly authorized representatives have executed this Agreement on the dates and year below written.


COUNTY OF MONROE

OVERSEAS REDEVELOPMENT  
COMPANY, LLC

DCA

  
\_\_\_\_\_  
Mayor/Chairman

  
\_\_\_\_\_  
by: Joe Cleghorn, its  
Manager

  
\_\_\_\_\_  
Director Division of  
Community  
Planning, DCA

JUL 19 2006

\_\_\_\_\_  
Date signed

7/21/06  
\_\_\_\_\_  
Date signed

8/9/06  
\_\_\_\_\_  
Date signed

  
\_\_\_\_\_  
DEPUTY CLERK

MONROE COUNTY ATTORNEY  
APPROVED AS TO FORM:

  
\_\_\_\_\_  
SUZANNE A. HUTTON  
COUNTY ATTORNEY

Date

EXHIBIT "A"

## LEGAL DESCRIPTION

Deck 1327189  
Bk# 2139 Pg# 1329

On the Island known as Stock island and Being Block 38, containing 20 lots, according to GEORGE L. McDONALD'S Plat of a part of Stock Island recorded in Plat Book 1, Page 55, Monroe County, Florida records.

ALSO

That portion of First Avenue lying and being between Block 38 and 39, GEORGE L. McDONALD'S Plat of a part of Stock Island recorded in disclaimed by Resolution No. 33-1973, Board of County Commissioners, recorded in official Records Book 537, page 937, of the Public Records of Monroe County, Florida.

MONROE COUNTY  
OFFICIAL RECORDS